

AMENDED IN ASSEMBLY APRIL 28, 2008

AMENDED IN ASSEMBLY APRIL 7, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2918

Introduced by Assembly Member Lieber

February 22, 2008

An act to amend Section 1785.20.5 of the Civil Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2918, as amended, Lieber. Employment: usage of consumer credit reports.

The federal Fair Credit Reporting Act (FCRA) and the state Consumer Credit Reporting Agencies Act define and regulate consumer credit reports and authorize the use of consumer credit reports for employment purposes, pursuant to specified requirements. The FCRA provides that it does not preempt state law, except as specifically provided or to the extent that state laws are inconsistent with its provisions.

Existing federal and state law specify the procedures that a potential user of a consumer credit report in the employment context is required to follow before requesting a report and if adverse action is taken based on the report. Both federal and state law provide an exemption from liability for a violation of the provisions specified in those statutes if the person can show, by a preponderance of the evidence, that he or she maintained reasonable procedures to ensure compliance with those requirements.

This bill would prohibit the ~~potential~~ user of a consumer credit report from obtaining a consumer credit report for employment purposes unless

the information is (1) substantially job related ~~and the employer's reasons for the use of the information are disclosed to the consumer in writing,~~ meaning that the information in the consumer credit report relates to the position for which the person who is the subject of the report is being evaluated because the position has one or more specified characteristics, or (2) required by law to be disclosed to or obtained by the ~~potential~~ user of the report. The bill also would extend the exemption from liability for the maintenance of reasonable procedures to ensure compliance with the provisions specified in state law to encompass the new prohibition.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1785.20.5 of the Civil Code is amended
2 to read:
3 1785.20.5. (a) Prior to requesting a consumer credit report for
4 employment purposes, the user of the report shall provide written
5 notice to the person involved. The notice shall inform the person
6 that a report will be used *for employment purposes* and the source
7 of the report, and shall contain a box that the person may check
8 off to receive a copy of the credit report. If the consumer indicates
9 that he or she wishes to receive a copy of the report, the user shall
10 request that a copy be provided to the person when the user requests
11 its copy from the credit reporting agency. The report to the user
12 and to the ~~subject person who is the subject of the report~~ shall be
13 provided contemporaneously and at no charge to the ~~subject person~~
14 *who is the subject of the report.*
15 (b) The ~~potential~~ user of a consumer credit report shall not
16 procure a consumer credit report for employment purposes unless
17 the information in the report is either of the following:
18 (1) ~~Substantially job related and the employer's reasons for the~~
19 ~~use of the information are disclosed to the consumer in writing,~~
20 *which means that the information in the consumer credit report*
21 *relates to the position for which the person who is the subject of*
22 *the report is being evaluated because the position is one in which*
23 *one or more of the following are applicable:*
24 (A) *The position is a highly compensated or managerial one.*

1 (B) *The position is one in which there is access to customer or*
2 *employee personal or financial information.*

3 (C) *The position involves fiduciary responsibility or the handling*
4 *or managing of money or requires travel.*

5 (2) Required by law to be disclosed to or obtained by the
6 potential user of the report.

7 (c) Whenever employment involving a consumer is denied either
8 wholly or partly because of information contained in a consumer
9 credit report from a consumer credit reporting agency, the user of
10 the consumer credit report shall so advise the consumer against
11 whom the adverse action has been taken and supply the name and
12 address or addresses of the consumer credit reporting agency
13 making the report. A person shall not be held liable for any
14 violation of this section if he or she shows by a preponderance of
15 the evidence that, at the time of the alleged violation, he or she
16 maintained reasonable procedures to ensure compliance with this
17 section.